

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby submits its comments in response to the FCC's *Remand Notice*³ in the above-docketed proceeding. The *Remand Notice* was released by the FCC pursuant to the reversal and remand of its *Ninth Report and Order*⁴ by the United States Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC*.⁵ The *Remand Decision* directs the FCC to conduct further proceedings in order to demonstrate that its non-rural universal service support mechanism conforms to the requirements of Section 254 of the Telecommunications Act of 1996 (1996 Act).⁶

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA represents over 670 carrier members that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service, and its carrier members are leaders in the provision of advanced telecommunications services to American and international markets.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 02-41 (rel. Feb. 15, 2002) (*Remand Notice*).

⁴ *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432 (1999) (*Ninth Report and Order*).

⁵ *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Remand Decision*).

DISCUSSION

As USTA stated in its Motion for Extension of Time, filed herein on April 2, 2002, “[n]o issues are more important to the future of the wireline telecommunications industry, or the nation’s communications infrastructure, than universal service and the regulatory treatment for wireline broadband facilities.”⁷ Considering the numerous FCC universal service and broadband proceedings with comments and reply comments due for filing in the next two months, it is unfortunate that the industry was not provided additional time to prepare and submit comments in this important proceeding.⁸ USTA intends to file a more comprehensive submission prior to the closing and forwarding of the record herein to the Joint Board.⁹ USTA’s overarching position is that any final action by the FCC and the Joint Board in this remand proceeding must adhere to Section 254’s mandate that universal service support mechanisms be explicit, specific, predictable, sufficient and competitively neutral.

Although this proceeding addresses the non-rural high cost support mechanism,¹⁰ it is nonetheless important to carriers that contribute to, or receive support from, the rural high cost support mechanism since, among other things, it requires the FCC to address the statutory definitions of “sufficient”¹¹ and “reasonably comparable.”¹² The definitions associated with these terms have implications for both non-rural and rural high cost support mechanisms. Further, the Tenth Circuit expressed its concern about its inability to review the sufficiency of the FCC’s actions in the *Ninth Report and Order* because it did not know the full extent of federal support for universal service (e.g. the rural universal service support mechanism and the

⁶ 47 U.S.C. § 254.

⁷ USTA Motion for Extension of Time at p. 2.

⁸ See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 02-787 (rel. Apr. 8, 2002)

⁹ *Remand Notice* at ¶ 1.

¹⁰ See *Remand Notice* at ¶ 1.

shifting of implicit support to explicit support in FCC access reform proceedings). The Court, therefore, invited the FCC to address its complete plan for supporting universal service in this remand proceeding.

In the *Remand Decision*, the Court concluded that the FCC failed to define “sufficient” when the FCC determined in the *Ninth Report and Order* that its non-rural universal service support mechanism provided sufficient federal support. In the *Remand Notice*, the FCC asks “what it means for federal support for universal service to be ‘sufficient.’”¹³ USTA believes that sufficient federal support is that level of high cost support that guarantees the availability of affordable local voice service to high-cost customers. It is no less than the amounts provided by today’s federal universal service support mechanisms, absent rate rebalancing in the states or increased state high cost support. As implicit service subsidies decline or are removed, additional explicit universal service support will be required. Likewise, were the industry to move to a bill and keep compensation structure for carrier interconnection, the amount constituting sufficient federal and state high cost support would increase substantially.

In the past, USTA has opposed the use of cost models to “size” a universal service high cost fund or to determine the amount of support needed in order to assure affordable service in high cost areas. USTA continues to oppose models for this purpose or to determine the level of support that is sufficient. Carriers operate on the basis of real costs, not modeled costs. The actual costs of carriers serving high cost areas should be used to determine whether sufficient support will be provided by a particular high cost support mechanism.

Finally, Section 254’s mandate that universal service support be sufficient requires that the federal high cost support mechanism be free of caps. USTA supports *S.500* and *H.R. 1171*,

¹¹ 47 U.S.C. § 254(b)(5).

¹² 47 U.S.C. § 254(b)(3).

both of which would remove existing caps on federal high cost support mechanisms and prohibit the FCC from imposing caps on high cost support mechanisms in the future. USTA encourages the FCC to take this action on its own and alleviate the need for legislation.

USTA believes that states must also take steps to ensure that there is sufficient high cost support for carriers providing local voice service in high cost areas within their boundaries. As correctly pointed out by the Tenth Circuit, the responsibility for universal service support is a dual responsibility of both the FCC and the states. USTA cautions, though, that any approach taken by the FCC to provide an incentive to those states that have not implemented a high cost support mechanism should not punish carriers for the failure of a state to take appropriate action. USTA is very wary of an approach that would freeze federal high cost support to a state, or the carriers in that state, as a result of the state's failure or refusal to implement a high cost support mechanism. Although USTA supports the implementation of mechanisms to induce state action to preserve and advance universal service, such mechanisms must be carefully conceived in order to avoid compounding an existing problem.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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¹³ *Remand Notice* at ¶ 17.

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on April 10, 2002, Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

/s/Meena Joshi
Meena Joshi